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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 SHANNON L. ANDERSON;  
10 JONATHAN C. ANDERSON,

11 Plaintiffs,

12 v.  
13

14 U.S. BANK, NATIONAL  
15 ASSOCIATION, as Trustee for the  
16 Lehman Mortgage Trust Mortgage  
17 Pass Through Certificates, Series  
18 2005-1; DOES 1 THROUGH 10,  
19 inclusive,

20 Defendants.

CASE NO. 12cv2743 - IEG (NLS)

**ORDER:**

**(1) GRANTING IN PART  
DEFENDANT'S MOTION TO  
DISMISS [Doc. No. 3]; and**

**(2) REMANDING STATE LAW  
CLAIMS.**

21 Presently before the Court is the motion of Defendant U.S. Bank, National  
22 Association ("Defendant") to dismiss the complaint of Plaintiffs Shannon L.  
23 Anderson and Jonathan C. Anderson (collectively "Plaintiffs") for failure to state a  
24 claim. [Doc. No. 3, Def.'s Mot.] For the following reasons, the Court **GRANTS** in  
25 part Defendant's motion to dismiss and **REMANDS** Plaintiffs' state law claims.

**BACKGROUND**

26 This case concerns a July 7, 2005 mortgage loan to Plaintiffs. [Doc. No. 1,  
27 Compl. ¶ 23.] On November 11, 2012, Plaintiffs filed a complaint against  
28 Defendant asserting six causes of action: (1) declaratory relief under 28 U.S.C. §§  
2201, 2202; (2) negligence; (3) quasi contract; (4) violation of 15 U.S.C. § 1692, *et*

1 *seq.*; (5) violation of California Business and Professions Code § 17200, *et seq.*; and  
 2 (6) accounting. [Doc. No. 1, Compl.] Plaintiffs' claims are based on their  
 3 allegations that Defendant has no right, title, or interest in the promissory note  
 4 ("Note") or mortgage. [Id. ¶ 41.] Defendant subsequently filed the present motion  
 5 to dismiss. [Doc. No. 3, Def.'s Mot.]

## 6 DISCUSSION

### 7 **I. Motion to Dismiss**

8 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
 9 Procedure tests the legal sufficiency of the claims asserted in the complaint. Fed. R.  
 10 Civ. P. 12(b)(6); Navarro v. Block, 250 F.3d 729, 731 (9th Cir. 2001). The court  
 11 must accept all factual allegations pleaded in the complaint as true, and must  
 12 construe them and draw all reasonable inferences from them in favor of the  
 13 nonmoving party. Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 337-38 (9th  
 14 Cir.1996). To avoid a Rule 12(b)(6) dismissal, a complaint need not contain  
 15 detailed factual allegations, rather, it must plead "enough facts to state a claim to  
 16 relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570  
 17 (2007). A claim has "facial plausibility when the plaintiff pleads factual content  
 18 that allows the court to draw the reasonable inference that the defendant is liable for  
 19 the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing  
 20 Twombly, 550 U.S. at 556).

21 However, "a plaintiff's obligation to provide the 'grounds' of his  
 22 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic  
 23 recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at  
 24 555 (quoting Papasan v. Allain, 478 U.S. 265, 286 (1986)) (alteration in original).  
 25 A court need not accept "legal conclusions" as true. Iqbal, 556 U.S. at 678. In spite  
 26 of the deference the court is bound to pay to the plaintiff's allegations, it is not  
 27 proper for the court to assume that "the [plaintiff] can prove facts that [he or she]  
 28 has not alleged or that defendants have violated the . . . laws in ways that have not

1 been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of  
 2 Carpenters, 459 U.S. 519, 526 (1983). “Where a complaint pleads facts that are  
 3 ‘merely consistent with’ a defendant’s liability, it stops short of the line between  
 4 possibility and plausibility of entitlement to relief.” Iqbal, 556 U.S. at 1949  
 5 (quoting Twombly, 550 U.S. at 678).

6 In determining the propriety of a Rule 12(b)(6) dismissal, a court may not  
 7 look beyond the complaint for additional facts. United States v. Ritchie, 342 F.3d  
 8 903, 908 (9th Cir. 2003). Further, a court generally may not consider materials  
 9 beyond the pleadings when ruling on a Rule 12(b)(6) motion. However, a court  
 10 “may take judicial notice of matters of public record . . . as long as the facts noticed  
 11 are not subject to reasonable dispute.” Skilstaf, Inc. v. CVS Caremark Corp., 669  
 12 F.3d 1005, 1016 n.9 (9th Cir. 2012).<sup>1</sup> The Court will first address Plaintiffs’ first  
 13 cause of action for declaratory relief and fourth cause of action for violation of 15  
 14 U.S.C. § 1692, *et seq.*, which supply federal question jurisdiction.

#### 15 **A. First Cause of Action: Declaratory Relief**

16 Plaintiffs seek declaratory relief to “determine the status of Defendant’s  
 17 claims.” [Doc. No. 1, Compl. at 23.] More specifically, “Plaintiffs requests [sic]  
 18 the Court make a finding and issue appropriate orders stating the named Defendant  
 19 an [sic] none of the Doe Defendants, have any right or interest in Plaintiffs’ Note,  
 20 Deed of Trust, or the Property which authorizes them, in fact or as a matter of law,  
 21 to collect Plaintiffs’ mortgage payments or enforce the terms of the Note or Deed of  
 22 Trust in any manner whatsoever.” [Id. ¶ 77.]

23 “Declaratory relief is appropriate: (1) when the judgment will serve a useful  
 24 purpose in clarifying and settling the legal relations in issue, and (2) when it will  
 25 terminate and afford relief from the uncertainty, insecurity, and controversy giving  
 26 rise to the proceeding.” Guerra v. Sutton, 783 F.2d 1371, 1376 (9th Cir. 1986).

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 28 <sup>1</sup> Because the Court resolves this motion to dismiss without consulting the documents for  
 which judicial notice is sought, the Court declines to address the request for judicial notice. [Doc. No.  
 3-2, Request for Judicial Notice.]

1 “While the existence of another adequate remedy does not preclude a declaratory  
 2 judgment that is otherwise appropriate, the availability of other adequate remedies  
 3 may make declaratory relief inappropriate.” Fimbres v. Chapel Mortg. Corp., 2009  
 4 WL 4163332, at \*5 (S.D. Cal. Nov. 20, 2009) (internal quotations and citations  
 5 omitted). A federal court may decline to address a declaratory relief claim “[w]here  
 6 the substantive suit would resolve the issues raised by the declaratory judgment  
 7 action, . . . because the controversy has ‘ripened’ and the uncertainty and  
 8 anticipation of litigation are alleviated.” Tina v. Countrywide Home Loans, Inc.,  
 9 2008 WL 4790906, at \*2 (S.D. Cal. Oct. 30, 2008) (quoting Tempco Elec. Heater  
 10 Corp. v. Omega Eng’g, Inc., 819 F.2d 746, 749 (7th Cir. 1987)).

11 In the present case, the Complaint does not suggest that declaratory relief  
 12 would entitle Plaintiffs to relief beyond what is requested in their substantive  
 13 claims. Furthermore, the Complaint does not suggest that the substantive suit  
 14 would not resolve the issues raised by the claim for declaratory relief. For example,  
 15 Plaintiffs’ fifth cause of action for violation of Business and Professions Code §  
 16 17200, *et seq.* requests that Defendant be enjoined from undertaking certain actions,  
 17 including accepting payments. [Doc. No. 1, Compl. ¶¶ 104, 110.] Plaintiffs also  
 18 request an order that any Defendants claiming an interest in the Property “take any  
 19 and all actions necessary to remove the cloud they have placed upon [the] title and  
 20 an order enjoining such Defendants from taking such action in the future.” [Id. ¶  
 21 112.] Plaintiffs’ third and sixth causes of action for quasi contract and an  
 22 accounting, respectively, request that any money paid to Defendant be returned  
 23 because no money was owed to Defendant. [Id. ¶¶ 91, 94, 116.] These claims  
 24 necessarily require a determination whether Defendant has any rights or interest  
 25 related to the Note, Deed of Trust, and subject property. [Id. ¶¶ 90-92, 115-116.]

26 Accordingly, declaratory relief is inappropriate, and the Court **GRANTS**  
 27 Defendant’s motion to dismiss with prejudice as to Plaintiff’s claim for declaratory  
 28 relief.

1           **B.      Fourth Cause of Action: Violation of 15 U.S.C. § 1692, *et seq.***

2           Plaintiffs contend that Defendant violated 15 U.S.C. § 1692, the Fair Debt  
3 Collection Practices Act (FDCPA) by, inter alia, “[f]alsely represent[ing] the status  
4 of the debt, in particular, that it was due and owing to Defendant [U.S. Bank] at the  
5 time the suit was filed” and “[f]alsely representing or implied [sic] that the debt was  
6 owing to Defendant [U.S. Bank] as an innocent purchaser for value, when in fact,  
7 such an assignment had not been accomplished” in their attempts to collect on the  
8 Note. [Doc. No. 1, Compl. ¶ 97.] Plaintiffs allege that Defendant is the “purported  
9 assignee” of the debt. [Id.]

10          The FDCPA “generally prohibits ‘debt collectors’ from making false or  
11 misleading representations and from engaging in various abusive and unfair  
12 practices in collecting debts.” Klohs v. Wells Fargo Bank, N.A., 2012 WL  
13 4758126 (D. Haw. Oct. 4, 2012) (citing Heintz v. Jenkins, 514 U.S. 291, 292  
14 (1995)). Thus, a defendant must be a “debt collector” within the meaning of the  
15 FDCPA to be liable for its violation. Heintz, 514 U.S. at 294. The term “debt  
16 collector” is defined as: “any person who uses any instrumentality of interstate  
17 commerce or the mails in any business the principal purpose of which is the  
18 collection of any debts, or who regularly collects or attempts to collect, directly or  
19 indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. §  
20 1692a(6).

21          Courts have found that a defendant is not a “debt collector” within the  
22 meaning of the FDCPA when the plaintiff does not adequately allege that the  
23 defendant was “(1) a person whose principal business is the collection of debts  
24 (whether on behalf of himself or others); or (2) a person who regularly collects  
25 debts on behalf of others (whether or not it is the principal purpose of his  
26 business).” Derusseau v. Bank of America, N.A., 2011 WL 5975821, at \*6 (S.D.  
27 Cal. Nov. 29, 2011) (quoting Izenburg v. ETS Servs., 589 F.Supp.2d 1193, 1999  
28 (C.D. Cal. 2008) (internal quotation marks removed)).

Further, many courts have found that mortgagees, their beneficiaries, and their assignees are not “debt collectors” under the FDCPA. See, e.g., Perry v. Stewart Title Co., 756 F.2d 1197, 1208 (5th Cir. 1985) (“The legislative history of section 1692a(6) indicates conclusively that a debt collector does not include the consumer’s creditors, a mortgage servicing company, or an assignee of a debt, as long as the debt was not in default at the time it was assigned.”); Wise v. Wells Fargo Bank, N.A., 850 F.Supp.2d 1047, 1053 (C.D. Cal. 2012) (excluding creditors collecting their own consumer debts, mortgage loan beneficiaries, and servicing companies from definition of “debt collector”); Karl v. Quality Loan Serv. Corp., 759 F.Supp.2d 1240, 1247-48 (D. Nev. 2010) (stating that mortgagees and their beneficiaries, including mortgage servicing companies, are not “debt collectors” within the meaning of the FDCPA); Diessner v. Mortg. Elec. Registration Sys., 618 F.Supp.2d 1184, 1188 (D. Ariz. 2009) (finding that mortgagees and their assignees are not “debt collectors” under the FDCPA).

Here, the Court finds that Plaintiffs have not alleged facts sufficient to show that Defendant is a debt collector within the meaning of the FDCPA. Plaintiff even states that Defendant is a purported assignee of the debt [Doc. No. 1, ¶ 97], which does not fall under the FDCPA’s definition of “debt collector.” See, e.g., Perry, 756 F.2d at 1208; Diessner, 618 F.Supp.2d at 1188. Further, both Plaintiffs and Defendant agree that the loan is not in default. See Perry, 756 F.2d at 1208. [Doc. No. 4, Pl.’s Opp. at 11-12; Doc. No. 3-1, Def.’s Mot. at 22.] Therefore, the Court **GRANTS** Defendant’s motion as to Plaintiffs’ fourth cause of action and **DISMISSES** it with prejudice.

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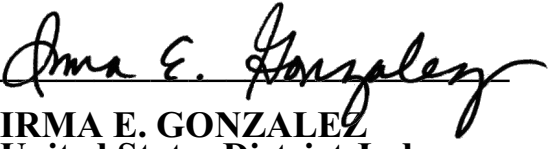




1 dismiss and **DISMISSES WITH PREJUDICE** Plaintiffs' first cause of action for  
2 declaratory relief and fourth cause of action for violation of 15 U.S.C. § 1692 *et seq.*  
3 The Court **REMANDS** to the San Diego Superior Court Plaintiffs' second, third,  
4 fifth, and sixth causes of action.

5 **IT IS SO ORDERED.**

6 **DATED:** April 15, 2013

7   
8 **IRMA E. GONZALEZ**  
9 **United States District Judge**